

15. AMERICANS WITH DISABILITIES ACT

BASIC REQUIREMENT

Titles II and III of the Americans with Disabilities Act of 1990 (ADA) provide that no entity shall discriminate against an individual with a disability in connection with the provision of transportation service. The law sets forth specific requirements for vehicle and facility accessibility and the provision of service, including complementary paratransit service.

AREAS TO BE EXAMINED

1. *Vehicle Accessibility*
2. *Facility Accessibility*
3. *Service Provision*
4. *Training*
5. *Maintenance of Accessibility Features*
6. *Services Not Requiring ADA Complementary Paratransit*
7. *ADA Complementary Paratransit*
8. *Rail Service*
9. *Complaints/Lawsuits*

REFERENCES

1. [49 CFR Part 27](#), "Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance"

2. [49 CFR Part 37](#), "Transportation Services for Individuals with Disabilities"
3. [49 CFR Part 38](#), "Americans with Disabilities Act (ADA) Accessibility Specifications for Transportation Vehicles"
4. [FTA C 9040.1F](#), "Nonurbanized Area Formula Program Guidance and Grant Application Instructions"

USEFUL WEB LINKS

[DOT Disability Law Guidance](#)

[ADA Accessibility Guidelines for Buildings and Facilities \(ADAAG\)](#)

[FTA's ADA Website](#)

[Transit Cooperative Research Program Synthesis Projects](#)

[Federal Highway Administration Guidance on Pedestrian Access for Persons with Disabilities](#)

[Project ACTION](#)

[Disability.gov](#)

[U.S. Department of Justice ADA Homepage](#)

Note that these Useful Web Links are not a basis for deficiencies and that any deficiencies (or lack thereof) cannot be based solely on their content.

QUESTIONS FOR THE REVIEW

1. *During the past two Federal fiscal years, did the FTA Office of Civil Rights conduct an ADA compliance review? Is a review scheduled for the current Federal fiscal year? If yes, what is the scope of the review(s)?*

EXPLANATION

Consistent with FTA's oversight responsibilities, FTA has a program of ADA compliance reviews. The reviews target a particular area of the ADA and the implementing regulations, such as ADA complementary paratransit; key, new, and renovated rail stations; fixed route stop announcements and route identification; and fixed route bus lift and maintenance reliability.

Even if an ADA review site visit has been conducted within the past two Federal fiscal years or one is scheduled for the current fiscal year, ask the relevant questions in this section.

REFERENCE

None

SOURCES OF INFORMATION

Prior to the site visit, the reviewer will contact the regional civil rights officer (RCRO) to determine if an ADA compliance review of the grantee has been conducted during the review period.

DETERMINATION

None

SUGGESTED CORRECTIVE ACTION

None

Part A: Bus and Rail Vehicles

2. *Since the last review, has the grantee or a subrecipient purchased or leased any new bus or rail vehicles for use in fixed route service? If yes, were the vehicles accessible?*
3. *Since the last review, has the grantee or a subrecipient purchased or leased any used bus or rail vehicles for use in fixed route service? If yes, do the vehicles comply with the applicable standards under 49 CFR Part 38? If*

no, does the grantee have documentation of good faith efforts meeting the requirements of 49 CFR 37.73(c), 37.81(c), or 37.87(c) to obtain accessible used equipment?

4. *Since the last review, has the grantee or a subrecipient remanufactured any existing bus or rail vehicles for use in fixed route service? If yes, are the vehicles readily accessible to people with disabilities, including those who use wheelchairs? If no, has the grantee documented the results of the engineering analysis demonstrating a significant adverse impact on the structural integrity of the vehicle as required under 49 CFR 37.75(c), 37.83(c), or 37.89(c)?*
5. *When subrecipients remanufacture vehicles or acquire remanufactured vehicles, how does the grantee ensure that they comply with ADA requirements?*
6. *If the grantee or a subrecipient contracts for fixed route service, including commuter bus service, how does the grantee know that the buses used for the service are accessible?*
7. *Since the last review, has the grantee or a subrecipient purchased or leased any new vehicles that are not accessible for demand responsive service, including route deviation service? If yes:*
 - a. *Is the grantee or subrecipient providing equivalent service as specified under 49 CFR 37.77(c) and 37.105?*
 - b. *Has the grantee or subrecipient documented its analysis of equivalent service?*

- c. *Has the grantee filed a certification of equivalent service?*
- d. *Has the state obtained a certification of equivalent service from Section 5307 and 5311 subrecipients?*
- e. *How does the grantee monitor its own and its subrecipients' compliance with equivalent service provisions?*

EXPLANATION

49 CFR Part 37 includes specific requirements for the acquisition of accessible vehicles by public and private entities. 49 CFR Part 38 contains accessibility standards for transportation vehicles. Grantees must comply with the requirements, as must contractors and subrecipients.

Private nonprofit entities are eligible subrecipients under Sections 5310, 5311, 5316, and 5317. Private for profit entities are eligible subrecipients under Sections 5316 and 5317. All Section 5311 subrecipients, including private nonprofit entities, follow the rules for public entities. For Section 5310, 5316, and/or 5317 subrecipients that are private entities that operate service for the general public, consult TCR's ADA Team Leader in FTA's Headquarters Office for guidance.

Public Entities

All new bus and rail vehicles purchased or leased by public entities operating fixed route service must be accessible (must comply with 49 CFR Part 38 standards).

All used bus and rail vehicles must be accessible. Used bus and rail vehicles that are not accessible may only be purchased or leased if, after making demonstrated good-faith efforts to obtain an accessible vehicle, the entity is unable to do so. Good faith efforts are defined in 49 CFR 37.73(c) and 37.81(c) as including at least the following steps:

- an initial solicitation or documented communication for used vehicles specifying that all used vehicles are to be lift equipped or otherwise accessible to and usable by individuals with disabilities;
- a nationwide search for accessible vehicles, involving specific inquiries to used vehicle dealers and other transit providers; and
- advertising in trade publications and contacting trade associations.

The grantee must keep records documenting good faith efforts for three years.

Remanufactured vehicles must be made accessible to the maximum extent feasible. It is considered feasible to remanufacture a vehicle so that it is accessible, unless an engineering analysis demonstrates that including accessibility features would have a significant adverse effect on the structural integrity of the vehicle. Specific standards for the various types of transit vehicles are established by 49 CFR Part 38.

When a grantee contracts for fixed route service, including commuter bus service, all of the buses used in the service must be accessible. The contractor must meet the grantee's obligations as it "stands in the shoes" of the grantee and the grantee cannot contract away its obligations to provide accessible service.

Public entities operating demand responsive service for the general public must purchase or lease accessible vehicles unless it can be demonstrated that the system, when viewed in its entirety, provides a level of service to persons with disabilities, including persons who use wheelchairs, that is equivalent to the level of service it provides to persons without disabilities. (Demand responsive service for the general public does not include ADA complementary paratransit service, which is subject to specific requirements.) The service for the general public must be provided in the most integrated setting feasible and be equivalent with respect to:

- response time
- fares
- geographic service area
- hours and days of service
- restrictions or priorities based on trip purpose
- availability of information and reservation capability
- constraints on capacity or service availability

Before procuring any non-accessible vehicle for demand responsive service, the grantee must file an equivalent service certification with FTA. A state must obtain certifications from Section 5307 and 5311 subrecipients. Appendix C to 49 CFR Part 37 of the DOT ADA regulations includes a copy of the certification of equivalent service. Grantees should signify that they have filed certifications of equivalent service by checking certification number 11 of the annual certifications and assurances. Grantees that have checked certification number 11 should be able to demonstrate that the certification of equivalent service has been filed with the FTA.

Private Entities

A private entity primarily engaged in the provision of transportation services may purchase a vehicle that is not accessible under the following circumstances:

- When acquiring a sedan
- When acquiring a new van with capacity of fewer than eight persons, including the driver,

for fixed route service if the service, when viewed in its entirety, meets the equivalent service standard

- When acquiring a vehicle for demand response service if the service, when viewed in its entirety, meets the equivalent service standard

A private entity not primarily engaged in the provision of transportation service may purchase a vehicle that is not accessible under the following circumstances if the service, when viewed in its entirety, meets the equivalent service standard:

- When acquiring a non-accessible vehicle for fixed route service with capacity of fewer than 16 persons, including the driver
- When acquiring a vehicle for demand response service

Oversight

Grantees that allow subrecipients to purchase or remanufacture vehicles directly must ensure that the subrecipients comply with ADA requirements. The grantee should monitor its service and the service of its subrecipients to ensure that equivalent service, that is, equal opportunity for each individual with a disability to use the transportation service, exists. The grantee should document its analysis.

REFERENCE

[49 CFR Part 37.23](#)
[49 CFR Part 37, Subpart D](#)
[49 CFR Part 37, Subpart E](#)
[49 CFR Part 37, Appendix C](#)
[49 CFR Part 38](#)

SOURCES OF INFORMATION

The reviewer will examine grant projects in TEAM-Web to determine the types of vehicles acquired and if the grantee has filed the certification of equivalent service FTA. On site, discuss each instance in which a non-accessible vehicle was acquired since the last review. For each non-accessible vehicle acquired the reviewer will determine whether the conditions were met. Supporting documentation for each acquisition (e.g., documentation of good faith efforts to obtain an accessible vehicle or documentation of equivalent service) will be reviewed. Discuss how the grantee monitors equivalent service. If subrecipients have acquired non-accessible vehicles, the reviewer examine a sample of supporting documentation, including procurement documents, waivers, documentation of good faith efforts to acquire accessible vehicles, or certifications of equivalent service, as required.

DETERMINATION

The grantee is deficient if it has acquired non-accessible vehicles and the conditions permitting the acquisition of a non-accessible vehicle have not been met. The grantee is deficient if contractors do not use accessible vehicles for fixed route service. The

grantee is deficient if it has purchased used, non-accessible vehicles and cannot document good faith efforts to obtain accessible vehicles. The grantee is deficient if it purchased non-accessible vehicles for general public demand responsive service and did not file a certification of equivalent service.

The grantee is deficient if it does not ensure that subrecipients acquire accessible vehicles or meet the conditions that permit acquisition of non-accessible vehicles. The grantee is deficient if subrecipients have acquired non-accessible vehicles and it cannot document that the subrecipients meet the equivalent service standard. The grantee is deficient if it did not obtain a certification of equivalent service from a Section 5307 or 5311 subrecipient acquiring a non-accessible vehicle for demand responsive service.

SUGGESTED CORRECTIVE ACTION

The grantee will be directed to submit documentation to the FTA RCRO that the applicable conditions have been met which permit the acquisition of the non-accessible vehicle(s) and procedures for ensuring that the applicable conditions are met before acquiring non-accessible vehicle(s).

The grantee will be directed to submit to the FTA RCRO procedures for requiring subrecipients to acquire accessible vehicles and for monitoring subrecipients' direct procurements of vehicles to ensure that the vehicles are accessible or that the specific required conditions have been met which permit the acquisition of non-accessible vehicles.

The state will be directed to submit to the FTA RCRO a procedure for obtaining a certification of equivalent service from Section 5307 and 5311 subrecipients purchasing non-accessible vehicles for demand responsive service.

Part B: Facilities

8. *Since the last review, has the grantee or a subrecipient constructed any new transit facilities? Are the facilities accessible?*
9. *Since the last review, has the grantee or a subrecipient altered any transit facilities in any way? If yes, were the modifications in accordance with Appendix A to 49 CFR Part 37, the ADA Accessibility Guidelines (ADAAG)? If no, has the grantee provided documentation sufficient to support the determination that the*

facility was made accessible to the maximum extent feasible or that the cost of alterations required to the path of travel were disproportionate to the overall alterations in terms of cost and scope?

10. *When subrecipients construct or modify facilities, how does the grantee ensure that they comply with ADA requirements as incorporated into 49 CFR Part 37?*

EXPLANATION

Any new facility to be used in providing public transportation services must be accessible according to the standards referenced in 49 CFR Part 37 Appendix A. If the grantee alters an existing facility used to provide public transportation, the altered portions of the facility must be accessible. When the nature of an existing facility makes it impossible to comply fully with applicable accessibility standards, the alterations must be made accessible to the maximum extent feasible. 49 CFR 37.43(b) defines "to the maximum extent feasible" as "the occasional case where the nature of an existing facility makes it impossible to fully comply with applicable standards through a planned alteration." When an alteration affects the usability of or access to an area containing a primary function (i.e., a major activity for which the facility is intended), the path of travel to the altered area and the bathrooms, telephones, and drinking fountains must be accessible unless the cost is disproportionate to the overall alterations in terms of cost and scope. The regulations provide guidance to define disproportionate costs, specify what costs may be counted, and provide a priority listing for accessibility features.

A grantee must provide documentation sufficient to support that it has made the facility accessible to the maximum extent feasible or that alterations required but not made to the path of travel were disproportionate to the overall alterations in terms of cost and scope.

Grantees must ensure that subrecipients comply with ADA requirements when constructing or altering a facility. If there are parties other than the grantee or subrecipients responsible for portions of the facility, the grantee must ensure that they also comply with the ADA requirements.

REFERENCE

49 CFR Part 37 Subpart C (37.41-37.45)
49 CFR Part 37 Appendix A
DOT Final Rule Adopting New Accessibility Standards
– Effective November 29, 2006

SOURCES OF INFORMATION

Before the site visit, grants will be reviewed in TEAM-Web for facility projects. During the site visit, the reviewer will discuss with the grantee and inspect the facility if it is included in a site visit. The reviewer will ensure that procurement documents for architectural/engineering services reference the ADA requirements. If the grantee has undertaken alterations to an area that serves a primary function but has not made the path of travel accessible due to disproportionality, the reviewer will examine supporting documentation, including the cost calculations. Subrecipient oversight procedures also will be discussed.

DETERMINATION

The grantee is deficient if the new facilities do not comply with the standards referenced in 49 CFR Part 37, Appendix A. The grantee is deficient if alterations do not comply with the standards referenced in 49 CFR Part 37, Appendix A, and it does not have documentation supporting the reasons for not making alterations fully accessible.

The grantee is deficient if it has not ensured that subrecipients that construct or modify facilities comply with ADA requirements.

SUGGESTED CORRECTIVE ACTION

The grantee will be directed to submit to the FTA RCRO a schedule for making the necessary modifications to bring the facility into compliance and report quarterly on progress until full compliance is attained. The grantee will be directed to submit to the RCRO documentation supporting the reasons for not making facility alterations fully accessible.

The grantee will be directed to submit to the FTA RCRO procedures for overseeing subrecipients to ensure that they comply with facility accessibility requirements when constructing or altering a facility.

Part C: Service Provision

11. *What are the grantee's procedures or policies governing the following ADA requirements:*
- a. *Stop announcements on fixed route vehicles?*
 - b. *Means of route identification at stops served by multiple vehicles on multiple routes?*
 - c. *Service animals in vehicles and facilities?*

- d. *Transporting devices meeting the definition of a “common wheelchair?”*
- e. *Drivers providing assistance with the use of accessibility equipment on the vehicle including lifts, ramps, and securement systems?*
- f. *Use of wheelchair securements?*
- g. *Provision of service when a mobility device cannot be secured?*
- h. *Passengers using mobility aids transferring to a seat?*
- i. *Use of lifts or ramps by standees?*
- j. *Signage designating priority seating for elderly persons and persons with disabilities for vehicles used in fixed route service?*
- k. *Requesting that persons sitting in priority seats vacate those seats when a person with a disability needs to use them?*
- l. *Use of accessibility related equipment and features by personnel, such as automatic enunciators, stop request buttons, etc.?*
- m. *Public information/communications available in accessible formats? In what formats is information regarding transportation services available?*
- n. *Lift/ramp deployment at any stop?*
- o. *Service to persons using respirators or portable oxygen?*
- p. *Time allowed for persons with disabilities to board/disembark a vehicle?*

12. *How are the above requirements communicated to employees, contractors, subrecipients, and lessees?*

13. *How does the grantee monitor adherence to these requirements or otherwise enforce their implementation?*

EXPLANATION

The Department of Transportation (DOT) ADA regulations (49 CFR 37.161-167) detail specific service requirements. The regulations do not require written policies detailing how a grantee will comply with these service provisions, but the grantee should demonstrate that these requirements are the common and effective practice. The grantee should be able to provide reasonable documentation to demonstrate that operators are trained in these requirements and how the grantee enforces their implementation.

- a. Stop announcements are required for fixed route service at transfer points, major intersections, destination points, intervals along the route to orient passengers, and any stop upon request. The ADA supersedes any union agreement that prevents the grantee from requiring operators to call stops.
- b. When more than one route serves a stop, the grantee shall provide a means by which an individual with a visual or other disability can identify the route on which he or she wants to travel.
- c. The grantee must allow service animals to accompany individuals with disabilities in vehicles and facilities. The DOT ADA regulations define a service animal as any animal individually trained to work or perform tasks for an individual with a disability, including but not limited to guiding individuals with impaired vision, alerting individuals with impaired hearing to intruders or sounds, providing minimal protection or rescue work, pulling a wheelchair, or fetching dropped items. It is discriminatory to require a person with a disability to certify or register a service animal. Policies or practices that have the effect of limiting service animal use are prohibited. A grantee may not require passengers to make prior arrangements when boarding a fixed route vehicle with a service animal. Note: DOT is developing guidance in light of recent amendments to the Department of Justice (DOJ) ADA regulations regarding service animals.
- d. Grantees must transport “common wheelchairs.” A common wheelchair is a three or four wheeled

mobility device that does not exceed 30 inches in width and 48 inches in length as measured two inches above the ground and does not weigh more than 600 pounds when occupied. Grantees are encouraged to make every effort to transport wheelchairs that do not meet the definition of a common wheelchair.

- e. Where necessary and upon request, the grantee's personnel will assist individuals with disabilities in the use of securement systems, ramps, and lifts. Personnel must leave their seats if it is necessary to provide the assistance.
- f. The DOT ADA regulations do not require that wheelchairs be secured; however, grantees may establish policies requiring passengers to allow their mobility devices to be secured, and may deny service if a passenger refuses.
- g. Grantees must transport passengers when the securement system cannot accommodate the rider's "common wheelchair." Grantees may not establish requirements concerning wheelchair equipment or specifications, such as brakes or wheel locks.
- h. Grantees may recommend, but not require, passengers using a wheelchair to transfer to a seat.
- i. The grantee must deploy lifts or ramps for persons who do not use wheelchairs, including standees.
- j. Vehicles used in fixed route service shall have signs designating priority seating for elderly persons and persons with disabilities.
- k. When an individual with a disability needs to sit in a seat or occupy a wheelchair securement location, the grantee shall ask the following persons to move in order to allow the individual with a disability to occupy the seat or securement location: (i) individuals, except other individuals with a disability or elderly persons, sitting in a location designated as priority seating for elderly and handicapped persons (or other seat as necessary); and ii) individuals sitting in a fold-down or other movable seat in a wheelchair securement location. The grantee is not required to enforce the request.
- l. The grantee will ensure that vehicle operators and other personnel make use of accessibility related equipment and features.
- m. Public information and communications must be made available in accessible formats.

- n. Grantees must not refuse to permit a passenger who uses a lift or ramp to board or disembark from a vehicle at any designated stop, unless the lift or ramp cannot be deployed, the lift or ramp will be damaged if it is deployed, or temporary conditions preclude the safe use of the stop by all passengers (i.e., the stop is "closed" for the duration of such conditions).
- o. Grantees may not deny service to individuals using respirators or portable oxygen.
- p. Grantees must ensure adequate time for individuals with disabilities to board or disembark a vehicle.

The key to ensuring compliance with these policies is ensuring that all employees, contractors, subrecipients and lessees are aware of them. For employees, this might be done through initial and refresher training. It might even be beneficial for these policies to be communicated to riders, giving them an even knowledge base with the employees serving them.

Having policies is not sufficient. The grantee must monitor its compliance with the policies. In addition to monitoring its own employees, the grantee is responsible for informing contractors, subrecipients and lessees of the ADA requirements and for monitoring compliance with the applicable required service provisions.

REFERENCE

[49 CFR 37.161-167](#)

[49 CFR 38.27, 38.55 and 38.105](#)

[Disability Law Guidance on Use of Segways](#)

[FTA Bulletin on Common Wheelchairs and Public Transit](#)

SOURCES OF INFORMATION

Driver handbooks, operating and training manuals, and internal bulletins for information or procedures pertinent to the regulations will be reviewed. The reviewer will determine if procedures include monitoring of compliance with requirements related to ADA provisions and whether public information materials include details on communications in alternative formats. State/project management plans for policies regarding service provision also will be reviewed. The reviewer will examine documentation of oversight activities, including surveys, checklists, interview forms, and follow up correspondence.

DETERMINATION

The grantee is deficient if any required procedures are not in effect. The grantee is deficient if there are policies or procedures that are contrary to the ADA requirements. The grantee is deficient if policies are not enforced or internal operations are not monitored.

The grantee is deficient if it does not ensure that contractors, subrecipients, and lessees follow these requirements.

SUGGESTED CORRECTIVE ACTION

The grantee will be directed to submit documentation to the FTA RCRO that all required service provisions have been implemented and provide evidence of monitoring the implementation of these provisions.

The grantee will be directed to submit to the FTA RCRO procedures for monitoring contractors, subrecipients, and lessees for compliance with the applicable required service provisions.

Part D: Training

- 14.** *Are personnel, contractors, subrecipients, and lessees trained to proficiency so that they operate vehicles and equipment safely and properly assist and treat individuals with disabilities who use the service with respect, courtesy, and sensitivity?*

EXPLANATION

The ADA requires that each fixed route or demand responsive service operator ensure that personnel are trained to proficiency, as appropriate, for their duties. This training is required so that personnel operate vehicles and equipment safely, assist passengers properly, and treat persons with disabilities who use the service in a respectful and courteous way, with appropriate attention to the differences among persons with disabilities.

The DOT ADA regulations do not specify an acceptable course or frequency of training. The grantee must establish appropriate standards for its particular operation. There is no requirement for recurrent or refresher training, but there is an obligation to ensure that each employee is proficient at all times. The training must be appropriate to the duties of each employee and must address both technical requirements and human relations. The reviewers should assess if the grantee is meeting its own standards, how it is monitoring performance to determine if personnel, contractors, subcontractors, subrecipients, and lessees are "proficient," and what, if any, consequences result if these standards are not met.

REFERENCE

[49 CFR 37.173](#)

SOURCES OF INFORMATION

Training materials and handbooks along with bulletins and other material provided to personnel will be reviewed. Complaint records may indicate problem areas.

DETERMINATION

The grantee is deficient if it has not incorporated sensitivity training on interacting with persons with disabilities into its various equipment operation and safety training programs. The grantee is deficient if it does not ensure that its personnel operate vehicles and equipment safely and properly assist individuals with disabilities.

The grantee is deficient if it does not ensure that contractors, subrecipients, or lessees have incorporated sensitivity training on interacting with persons with disabilities into its various equipment operation and safety training programs. The grantee is deficient if it does not ensure that personnel operate vehicles and equipment safely and properly assist individuals with disabilities.

SUGGESTED CORRECTIVE ACTION

The grantee will be directed to report to the FTA RCRO on the progress of revising the training program and retraining personnel. Continue to report quarterly to FTA on retraining until all personnel have been trained as appropriate for their duties.

Submit to the FTA RCRO procedures for monitoring the training programs of contractors, subrecipients, and lessees.

Part E: Maintenance

- 15.** *Are accessibility features maintained in operative condition? What system of regular and frequent maintenance checks of lifts and ramps has been established? Is this system sufficient to determine if lifts and ramps are operative?*
- 16.** *What is the policy with regard to lift and ramp failures on in-service vehicles? Are operators required to report failures promptly? Is alternative service provided to persons stranded for more than 30 minutes due to failures? Are lifts and ramps repaired within the timeframes required by the DOT ADA regulation prior to returning the vehicle to service? Does the*

grantee have sufficient accessible spares to enable it to meet the timeframes?

17. *How does the grantee monitor its operations and the operations of contractors, subrecipients, and lessees to ensure compliance with ADA maintenance requirements?*

EXPLANATION

Grantees, contractors, subrecipients, and lessees must maintain in operative condition vehicle accessibility features such as lifts, ramps, annunciators, and securement devices. They must have a system of regular and frequent maintenance checks for wheelchair lifts and ramps on non-rail vehicles that is sufficient to ensure that the lifts are operative. There is no specific requirement for daily cycling of lifts and ramps, though many grantees have adopted this practice to meet this requirement. The adequacy of the procedures may be reflected in the frequency of in-service failures.

Public entities and private entities operating service under contract to a public entity must ensure that operators report immediately any in-service lift and ramp failures. If a lift or ramp failure occurs on a route where the headway is greater than 30 minutes and the passenger cannot be served, the grantee is required to provide alternative service promptly. The vehicle must be removed from service before the beginning of the next service day if the lift or ramp is not repaired. The lift or ramp should be repaired before the vehicle is returned to service. In the event that there is no spare vehicle available and the grantee would be required to reduce service to repair the lift or ramp, it may keep the vehicle with the inoperable lift or ramp in service for no more than three days (if the grantee serves an area of more than 50,000 persons in population) or five days (if the grantee serves an area of 50,000 persons or fewer in population). If the grantee has Section 5309, 5316, or 5317 subrecipients that are not public entities, consult TCR's ADA Team Leader in FTA's Headquarters Office.

The grantee must monitor its compliance with the ADA maintenance requirements. In addition to monitoring its own operations, the grantee is responsible for ensuring that subrecipients, contractors, and lessees meet the requirements.

REFERENCE

49 CFR 37.161-163

SOURCES OF INFORMATION

Maintenance and operations policies will be reviewed. While in the maintenance facility, the reviewer will note if the grantee has and is following maintenance

procedures for wheelchair lifts, ramps, and other accessibility equipment. Reports on lift availability, if available, also will be examined. The reviewer will conduct a spot check of maintenance records to determine how long lifts, ramps, or other equipment may have been out of service. The reviewer will also examine monitoring procedures and documentation of monitoring activities.

DETERMINATION

The grantee is deficient if it does not have a program to maintain accessibility features in operative condition and has not established a system of regular and frequent maintenance checks of lifts and ramps. The grantee is deficient if records show that the grantee either does not follow the system or does not maintain the accessibility equipment properly. The grantee is deficient if operators do not report lift or ramp failures immediately. The grantee is deficient if it does not remove and repair buses with inoperable lifts and ramps within the required timeframes. The grantee is deficient if it does not provide alternative service when a lift or ramp fails on routes with headways greater than 30 minutes.

The grantee is deficient if it does not monitor contractors, subrecipients, and lessees for compliance with ADA maintenance requirements.

SUGGESTED CORRECTIVE ACTION

The grantee will be directed to submit to the FTA RCRO a preventive maintenance program for accessibility features. The grantee will be directed to submit to the FTA RCRO a system of maintenance checks for lifts or ramps. The grantee will be directed to submit to the FTA RCRO procedures to report immediately a lift or ramp failure on a vehicle in service. The grantee will be directed to submit to the FTA RCRO procedures to remove and repair buses with inoperable lifts and ramps within the required timeframes. The grantee will be directed to submit to the FTA RCRO procedures to provide alternative service on routes with headways greater than 30 minutes.

The grantee will be directed to submit to the RCRO procedures to ensure that subrecipients, contractors, and lessees comply with these requirements.

Part F: Fixed Route Services for Which ADA Complementary Paratransit Service is Not Required

18. *Does the grantee or a subrecipient provide commuter bus service? If yes, how did the grantee determine that the service has the characteristics specified in the DOT ADA regulations and is not fixed route service where*

complementary paratransit is required?

19. *Does the grantee or a subrecipient operate “university” service? Does the transit operator have a formal arrangement with the institution of higher education?*

EXPLANATION

The DOT ADA regulations require public entities operating fixed route transit to provide complementary paratransit to persons with disabilities who are unable to use the regular fixed route system. For the purposes of the regulation, all Section 5311 subrecipients must comply with the rules for public entities, including those that are nonprofits. The requirement to provide ADA complementary paratransit service does not apply to commuter bus and rail service and university transportation systems.

Commuter bus service is fixed route bus service characterized by service predominately in one direction during peak periods, and with limited stops and routes of extended length, usually between the central business district and outlying suburbs. It may also include other service characterized by a limited route structure, such as no attempt to comprehensively cover a service area, limited purposes of travel, and a coordinated relationship to another mode of transportation. A grantee operating commuter bus service must be able to demonstrate that the service can be characterized as such.

49 CFR 37.25 specifies that “university transportation systems” are operated by public or private institutions of higher education. Most transit operators are not institutions of higher education and, by definition, would therefore not be operating “university service.” In order for routes operated by a transit provider to be covered by this provision, an institution of higher education would have to have a formal arrangement with the transit operator.

The grantee must ensure that services described as commuter or university service provided by subrecipients has the characteristics specified in the DOT ADA regulations.

REFERENCE

49 CFR Part 37.25
49 CFR Part 37.121
49 CFR Part 37 Appendix D to §37.3
Disability Law Guidance re: Paratransit Requirements for §5311-Funded Fixed-Route Service Operated by Private Entities, 9/1/2005
FTA C 9040.1F, Ch. X, Section 11.f

SOURCES OF INFORMATION

The reviewer will determine whether bus service has the characteristics of commuter service. If applicable, the reviewer will ensure that university service is operated under formal arrangement with a public or private institution of higher education. Schedules, timetables, system maps, the website, and other public information also will be reviewed. Monitoring procedures and documentation of monitoring activities will be discussed during the site visit.

DETERMINATION

The grantee is deficient if it cannot explain or document that commuter bus service meets the ADA definition of commuter service. The grantee is deficient if it cannot document that service is operated under formal arrangement with an institution of higher education.

The grantee is deficient if it does not ensure that the commuter or university service provided by subrecipients has the characteristics specified in the DOT ADA regulations.

SUGGESTED CORRECTIVE ACTION

The grantee will be directed to submit to the FTA RCRO documentation to support its determination of commuter service. The grantee will be directed to submit to the FTA RCRO documentation that it has a formal arrangement with the institution of higher education.

The grantee will be directed to submit to the RCRO procedures for ensuring that the commuter or university service provided by subrecipients has the characteristics specified in the DOT ADA regulations.

20. *Does the grantee or a subrecipient provide route deviation service as its method for demand responsive service? If yes:*

- a. *Does the service deviate for people with and without disabilities?*
- b. *Does the grantee or subrecipient promote the service as route deviation service?*

21. *How does the grantee ensure that route deviation service provided by subrecipients has the characteristics of demand responsive service?*

EXPLANATION

The DOT ADA regulations require public entities operating fixed route transit to provide complementary

paratransit to persons with disabilities who are unable to use the regular fixed route system. For the purposes of the regulation, all Section 5311 subrecipients must comply with the rules for public entities, even those that are nonprofits. Route deviation systems are defined as demand responsive systems, which do not require ADA complementary paratransit.

One key factor to consider in determining if a transit system is fixed route or demand responsive is if an individual must request the service in some way, typically by making a phone call in advance. With fixed route service, no action is needed to access the service. If a person is at the bus stop at the time the bus is scheduled to appear, then the person can use the service. With demand responsive service, the individual typically must make a phone call in order to ride the bus. A system that permits user initiated deviations from routes generally fits the definition of demand responsive service.

To be considered demand responsive, the service must deviate for the general public, not just persons with disabilities. Systems should provide information to the public on how to request a deviation. If deviations are restricted to a particular group, the service ceases to be a form of demand responsive service for the general public. The service for persons with disabilities must be equivalent to the service for the general public as specified in 49 CFR 37.77.

The grantee must ensure that route deviation service provided by subrecipients has the characteristics of demand responsive service.

REFERENCE

[49 CFR Part 37.77](#)

[49 CFR Part 37 Appendix D](#) to §37.3

[Disability Law Guidance](#) re: Paratransit Requirements for §5311-Funded Fixed-Route Service Operated by Private Entities, 9/1/2005

[FTA C 9040.1F](#), Ch. X, Section 11.f

SOURCES OF INFORMATION

Schedules, timetables, system maps, the website, and other public information will be reviewed to ensure that the service is promoted as route deviation service

DETERMINATION

The grantee is deficient if it operates fixed route service and does not offer ADA complementary paratransit service. The grantee is deficient if its route deviation service does not deviate for the general public. The grantee is deficient if it does not promote the service as route deviation service. The grantee is deficient if it does not provide equivalent service to people with disabilities.

The grantee is deficient if it does not ensure that subrecipients deviate for the general public, promote the

service as route deviation service, or provide equivalent service to persons with disabilities.

SUGGESTED CORRECTIVE ACTION

The grantee will be directed to submit to the RCRO public information and other documentation to demonstrate that general public route deviation service has the characteristics of demand responsive service.

The grantee will be directed to submit procedures for ensuring that route deviation service provided by subrecipients has the characteristics of demand responsive service.

Part G: ADA Complementary Paratransit

22. *Does the ADA complementary paratransit eligibility process of the grantee and subrecipients consider eligible, and provide service to, ADA paratransit eligible individuals according to the requirements of Section 37.123 (e)?:*

- a. Are eligibility decisions based solely on a note from a physician? What percent of applicants are approved?*
- b. Are eligibility decisions made within 21 days of receipt of a complete application? How does the grantee know? If no, is presumptive eligibility granted?*
- c. Are persons who are denied eligibility or given conditional or temporary eligibility given a written notice with specific reasons for the decision and notice of their right to appeal? If conditional eligibility is granted, are conditions applied to individual trips?*
- d. Does the appeals process adhere to the DOT ADA regulations (opportunity to be heard, separation of functions, decision within 30 days, and written notification of decision with reason for it)?*

- e. *If a decision is not made within 30 days of completing the appeals process, is transportation provided until and unless a decision to deny the appeal is issued?*

EXPLANATION

Each grantee providing ADA complementary paratransit service is required to establish a process for determining ADA paratransit eligibility. Eligibility is to be strictly limited to certain categories of individuals:

- Any person with a disability who is unable to board, ride, or disembark from an accessible vehicle without the assistance of another person (except for the operator of a lift or other boarding device)
- Any person with a disability who could ride an accessible vehicle but the route is not accessible or the lift does not meet ADA standards
- Any person with a disability who has a specific impairment related condition that prevents the person from traveling to or from a boarding/disembarking location

There are many ways that the grantee can determine eligibility. The process may include functional evaluation or testing of applicants. Evaluation by a physician or health professional may be part of the process, but a diagnosis of a disability in and of itself does not establish eligibility. What is needed is a determination of whether, as a practical matter, the individual can independently use the regular fixed route transit service.

The goal of the process is to ensure that only persons who meet the regulatory criteria are regarded as eligible for complementary paratransit under the ADA. If decisions are based solely on a note from a physician, and 100 percent of applicants are approved, the grantee may not have an appropriate process. The grantee is not prohibited from providing service to other persons; however, the eligibility process must distinguish between someone who is eligible for paratransit under the ADA and someone who is provided service on some other basis. Information on the eligibility process is particularly important if the grantee is encountering difficulty with its ability to meet the demand for service.

The grantee must process a completed application within 21 days of submittal. If after 21 days, the grantee has not made an eligibility determination, the applicant is presumed eligible and must be provided service unless the grantee later denies the application. The grantee may require passengers to be recertified at reasonable intervals.

The grantee is required to establish an appeals process for persons denied eligibility or granted conditional eligibility. The applicant must be given a written reason for the determination and notice of the right to an appeal. The written determination cannot just state that it has been determined that the applicant can use fixed route service. Applicants should be required only to state their intent to appeal, not be required to give a full justification in writing prior to an opportunity to be heard. The grantee may require that an appeal be filed within 60 days of the denial of a person's application. The process must include an opportunity to be heard and to present information. The person hearing the appeal must be separate from the person who made the original decision to deny eligibility.

The grantee is not required to provide ADA complementary paratransit service pending the determination of the appeal, but if the decision takes longer than 30 days after completing the appeals process, paratransit service must be provided from that time until a decision to deny the appeal is issued. A written notification of an appeal determination, with the reason for it, is also required.

REFERENCE

[49 CFR 37.121-125](#)

[49 CFR Part 37 Appendix D](#) to §37.121-125

SOURCES OF INFORMATION

The reviewer will examine information provided to the public that describes the ADA complementary paratransit and the eligibility process. The reviewer will discuss with the grantee how applications are processed and how eligibility determinations are made. A spot check of recent application files will be conducted to ensure that the grantee processed them within the 21 day required time frame. The reviewer will discuss the appeals process and spot check files for recent appeals to ensure that the process meets the regulatory requirements. A sample of eligibility (including denial and conditionally eligible) and appeal decision letters will also be examined. Monitoring procedures and documentation of monitoring activities will be reviewed. The information from these questions concerning the ability to reserve next day trips will serve as input for the questions asked in questions 24 through 29.

DETERMINATION

The grantee is deficient if the application process relies solely on a note from a physician and applicants are granted eligibility based on a diagnosis alone. The grantee is deficient if it has not made a determination within 21 days of receipt of a completed application and applicants are not treated as eligible and provided service starting on the 22nd day, until a decision is made to deny the application.

The grantee is deficient if it fails to notify applicants of their right to appeal or if the appeals process does not include all required elements.

The grantee is deficient if it does not ensure that the eligibility process of subrecipients meets the DOT ADA requirements.

SUGGESTED CORRECTIVE ACTION

The grantee will be directed to submit revised procedures to the FTA RCRO for its eligibility determination and/or appeals process to meet the regulatory requirements .

The grantee will be directed to submit to the FTA RCRO procedures for ensuring that the eligibility processes of subrecipients meet the regulatory requirements.

23. Does the ADA complementary paratransit service provided by the grantee and subrecipients meet the following regulatory requirements:

- a. Is service provided to an ADA eligible individual? A personal care attendant (PCA)? A companion? Additional companions on a space available basis?*
- b. Are PCAs charged a fare? Are companions charged a fare?*
- c. Does the grantee treat as eligible visitors who present documentation that they are eligible in the jurisdiction in which they reside, present documentation of eligibility, or certify eligibility?*
- d. Is next day service provided? If yes, what percent of reservations are made for the next day?*
- e. Are requests for reservations accepted during normal business hours on all days prior to days of service (e.g., weekends, holidays) even if the administrative office is closed? How are reservations accepted when the administrative office is closed?*

- f. Are trips negotiated with the rider and scheduled within one hour of the requested trip time?*
- g. Are there any priorities based on trip purposes?*
- h. Is any subscription service provided? If so, what percent of trips? Is non-subscription capacity available?*
- i. What is the base mode of service, door to door or curb to curb? If curb to curb is the base mode of service, is door to door service provided when necessary to achieve origin to destination service?*
- j. Is ADA complementary paratransit service available during the same hours and days as fixed route service?*
- k. Is service provided within a ¾ mile radius of fixed routes and rail stations and within the core area? If service is provided beyond the ¾ mile radius and core areas, please describe.*
- l. Are fares no more than twice the non-discounted fixed route fare for a comparable fixed route trip?*

EXPLANATION

The DOT ADA regulations include detailed requirements for provision of ADA complementary paratransit. These requirements include:

- a. Individuals may be ADA paratransit eligible on the basis of a temporary or permanent disability. ADA complementary paratransit must be provided to an ADA eligible individual, a PCA if one is necessary, and one other individual accompanying the ADA eligible individual, if requested. Additional companions should be provided service if space is available.
- b. No fare may be charged for PCAs. Companions pay the same fare as the ADA-eligible individual.

- c. Service must be provided to visitors. Any visitor who presents ADA eligibility documentation from another jurisdiction must be provided service. If a visitor does not have ADA eligibility documentation, the grantee may request proof of residency, and if the disability is not apparent, proof of disability. The grantee must accept a certification by the visitor that he or she is unable to use fixed route transit. The grantee is not required to provide more than 21 days of service within a 365 day period. It may request that the visitor apply for eligibility in order to receive additional service beyond this number of days.
- d. Next day service is required. Advance reservations may be permitted up to 14 days before a desired trip.
- e. Requests for reservations must be accepted during normal business hours on a "next day" basis (not 24 hours in advance) on all days prior to days of service (e.g., weekends, holidays). Reservations for next day service must be taken during administrative office hours. Reservations can be accepted using mechanical means (e.g., answering machines, voice mail, Internet).
- f. Trips must be scheduled within a maximum of one hour of the requested pickup time.
- g. No restrictions or priorities may be placed on trip purpose.
- h. Unless there is non-subscription capacity, subscription service may not absorb more than 50 percent of the number of trips available at a given time. If there are no capacity constraints within a given system, subscription service is free to absorb as much as the transit system chooses.
- i. The regulations specify "origin to destination" service. The basic mode of service can be designated as door to door or curb to curb. If the grantee's basic mode of service is curb to curb, the grantee must have policies and procedures in place to provide assistance between the vehicle and the first doorway for customers who need additional assistance to complete the trip. The grantee cannot charge individuals needing door to door service an extra fee as this violates the nondiscrimination provisions of 49 CFR 37.5.
- j. The days and hours of service for fixed route service and ADA complementary paratransit service must be the same.
- k. The ADA service area at a minimum includes all origins and destinations within corridors within $\frac{3}{4}$ mile on each side of each fixed route. Within the core service area, any small areas not inside a corridor but surrounded by corridors also must be

served. Outside the core service area, the grantee may designate corridors with widths of up to $1\frac{1}{2}$ miles on each side of the fixed route, based on local circumstances. For rail systems (except commuter rail), the service area consists of a circle with a radius of $\frac{3}{4}$ mile around each rail station, for trips provided between origins and destinations in different station service areas. At end stations, the grantee may designate circles up to $1\frac{1}{2}$ miles. The grantee is not required to provide paratransit service in areas it does not have the legal authority to operate. The grantee may provide additional service.

- l. The ADA complementary paratransit fare cannot exceed twice the non-discounted fare for a trip of similar length, at a similar time of day, on the fixed-route system.

REFERENCE

[49 CFR 37.123-133](#)

[DOT Disability Law Coordinating Council Guidance on Origin to Destination Service](#)

SOURCES OF INFORMATION

The reviewer will examine information provided to the public, including the grantee's web site, for a description of the ADA complementary paratransit service. Internal operating policies that describe how trips are reserved and scheduled also will be reviewed to ensure that the service characteristics are consistent with the regulatory requirements. If the grantee is experiencing capacity constraints, identify if the population served, the level of service provided, or the service area exceeds the minimum requirements. Discuss the percentage of next day reservations. A very low percentage may indicate capacity constraints. The reviewer will spot check service hours in regards to weekend service, very early or late service, and special or new services. Monitoring procedures and documentation of monitoring activities also will be reviewed.

DETERMINATION

The grantee is deficient if the ADA complementary paratransit service does not meet all ADA regulatory requirements.

The grantee is deficient if it does not ensure that the ADA complementary paratransit service provided by subrecipients meets ADA requirements.

SUGGESTED CORRECTIVE ACTION

The grantee will be directed to submit documentation to the FTA RCRO that it has taken immediate steps to modify any operating policies and change services that do not meet the regulatory requirements.

The grantee will be directed to submit to the RCRO procedures for ensuring that the ADA complementary

paratransit service provided by subrecipients meets the ADA requirements.

24. *What is the telephone hold time standard? How is telephone access measured (averages, percentiles, etc.)?*
25. *At peak times, can a caller reach the reservation office? Do callers ever receive busy signals? How does the grantee or subrecipient know?*
26. *What is the denial rate (overall and for next day trips)? Are rides that are not provided in a one hour window tracked as denials? When one leg of a round trip cannot be reserved, how many denials are tracked when the rider declines the round trip?*
27. *Are restrictions placed on the number of trips? Are waiting lists used for non-subscription trips?*
28. *What is the on-time performance rate?*
29. *How does the grantee monitor its and its subrecipients' ADA complementary paratransit service to ensure that there is no lack of access to phone reservations? Pattern or practice of trip denials, untimely pick-ups, missed trips, and excessively long trips? How are operational data confirmed for accuracy? Do the data indicate a potential pattern or practice of capacity constraints?*

EXPLANATION

The DOT ADA regulations specify that a grantee may not limit the availability of complementary paratransit to eligible individuals by restrictions. Any operational pattern or practice that has the effect of limiting availability is prohibited (e.g., limited phone reservation capacity or substantial numbers of late pick-ups, trip denials, missed trips, or excessively long trips).

If on a regular basis, the phone lines are busy, average or long phone hold times are excessive, call abandonment rates are high, or callers after a certain time (e.g., mid-morning) are told that they cannot

reserve trips for the next day, the grantee is limiting the availability of service. The grantee also must ensure that an ADA eligible individual can reach a reservation agent to cancel a trip. The grantee should be able to provide data on the performance of its phone reservation system.

The regulations allow the grantee to negotiate pick-up times with ADA eligible persons within a one-hour +/- window. If the grantee cannot schedule a ride that is no more than one hour before or after the desired departing time, the trip must be tracked as a denial. Even if a rider accepts an offer of a trip that is outside the one hour window, the trip must be tracked as a denial due to the grantee's inability to meet the ADA service criteria. Similarly, if only one leg of a round trip can be reserved, and the rider declines the trip, it should be tracked as two denials. If the rider refuses an alternate time that is within the one hour window, it is not a denial for the purposes of ADA compliance.

Restrictions may not be placed on the number of trips taken by a rider. Waiting lists for non-subscription are service prohibited.

"Pattern or practice" in the regulations refers to regular or repeated actions, such as repeated denials on peak days, not isolated or singular incidents. The regulations note that operational problems beyond the control of the grantee, such as unanticipated weather or traffic problems that affect all vehicular traffic, do not count as a pattern or practice under this provision. Repeated incidents caused by poor maintenance or excessively tight scheduling, however, would trigger this provision. One trip during the review period that is one hour late is probably not a capacity constraint. To trigger this provision, there must be both a substantial number of late arrivals and the late arrivals in question must be significant in length.

In order to determine whether capacity constraints exist, the grantee should have a definition of what constitutes a missed trip, what on-time performance means, when a trip has been denied, and when travel time is too long. For example, at what point in time does a trip go from being late to being missed? Grantees are required to plan and budget for 100 percent of demand for next day service. FTA has determined that to intentionally plan to deny a set percentage of trips is not in compliance with ADA requirements.

The grantee should have a mechanism in place for monitoring its and its subrecipients' on-time performance and tracking these indicators of capacity constraints to comply with ADA requirements. While there is no regulatory requirement for record-keeping or monitoring in any particular way, unless the grantee has no trip denials and few complaints about other performance indicators, the grantee must be able to demonstrate that the denials it does have, as

well as the missed trips, late pickups, etc. are not an operational pattern or practice that significantly limits the availability of ADA paratransit service. Grantees should track service for ADA eligible trips separately from non-eligible trips.

REFERENCE

49 CFR 37.131(f)

SOURCES OF INFORMATION

The reviewer will discuss with the grantee what its standards of service are and whether the complementary paratransit service is meeting them. The reviewer will ask the grantee how complementary paratransit service is monitored and what the denial rate is. Performance data that the grantee collects also will be examined. The reviewer may phone the reservation line at various times of the day prior to or during the site visit to determine if a caller can reach a reservation agent. Some grantees may have communication systems that provide data on average call wait time, number of missed calls, call abandonment rates, and other indicators of performance. If no such data are collected or reviewed, discuss how the agency assures compliance with these requirements. The reviewer will examine subrecipient monitoring procedures and documentation of monitoring activities.

DETERMINATION

The grantee is deficient if it relies on waiting lists or trip caps, or demonstrates phone access limitations or substantial, repeated numbers of untimely pick-ups, trip denials, missed trips, or excessively long trips. The grantee is deficient if it has no provisions to accommodate peaks in demand.

The grantee is deficient if it is not tracking as a denial trips provided outside the one hour window, and is not tracking as two denials round trips that cannot be scheduled.

The grantee is deficient if it does not monitor its ADA complementary paratransit service capacity constraints.

The grantee is deficient if it does not monitor subrecipient ADA complementary paratransit service capacity constraints.

SUGGESTED CORRECTIVE ACTION

If the ADA complementary paratransit service does not have adequate capacity to meet the peak demand for service by ADA eligible riders, the grantee will be directed to submit to the FTA RCRO a plan for increasing capacity or taking other measures to reduce demand (e.g., consider eliminating service that exceeds ADA requirements or modify the fixed route service area or other characteristics) and reporting monthly on capacity issues until such time

as the data indicate that there is no pattern or practice of capacity constraints.

The grantee will be directed to submit to the FTA RCRO procedures for tracking trip denials correctly.

The grantee will be directed to submit to the FTA RCRO procedures for monitoring its ADA complementary paratransit service for patterns or practices of capacity constraints.

The grantee will be directed to submit to the FTA RCRO procedures for monitoring subrecipients' ADA complementary paratransit service for patterns or practices of capacity constraints.

30. *Is a no-show policy used by the grantee or a subrecipient? If yes:*

- a. *What is the suspension policy for no-shows?*
- b. *How does the grantee or subrecipient determine whether or not no-shows are under the rider's control?*
- c. *Are no-shows caused by operator error counted against the rider?*
- d. *What are the thresholds for a cancellation before it is considered a no-show?*
- e. *Are only riders who have demonstrated a true pattern or practice of no-shows suspended?*
- f. *Are financial penalties assessed for no-shows?*
- g. *How are riders allowed to contest no-shows?*
- h. *Is there an appeals process for suspensions?*
- i. *Is the length of the suspension reasonable?*

EXPLANATION

Many transit providers have a suspension policy for a pattern or practice of no-shows, as allowed by

49 CFR 37.125(h). However, such a policy must be narrowly tailored to a true pattern or practice. For example, three no-shows in 30 days would not be a pattern or practice for a daily rider. Ideally, such a policy would take into account frequency of rides and no-shows, and not use a simple number threshold.

Only no-shows that are under the rider's control may be counted against the rider. No-shows caused by reasons beyond the rider's control (e.g., scheduling problems, late pickups, and operational problems on the part of the transit provider or a family emergency or sudden turn for the worse in a variable medical condition) or operator error must not be counted against the rider.

FTA has permitted transit providers to include late cancellations in their suspension policy, but only to the extent that late cancellations have the same effect on the system as a no-show, and only for late cancellations within the rider's control. In most cases a provider should be able to absorb the capacity of a trip cancelled two hours before the scheduled pick-up.

Systems may not impose a financial penalty as part of a no-show policy, including charging for the fare for the no-show trip. 49 CFR 37.125(h) permits only the establishment of an administrative process to suspend, for a reasonable amount of time, the provision of complementary paratransit service to eligible individuals who establish a pattern or practice of missing scheduled trips. In some cases, however, transit operators and riders facing suspension have mutually agreed to accept payment for the missed trips in lieu of suspension. Where such arrangements are made voluntarily, FTA has elected not to intervene.

As access to complementary paratransit service is a civil right, the policy should allow riders to contest no-shows and there must be an appeals process for suspensions.

REFERENCE

[49 CFR 37.125\(h\)](#)

SOURCES OF INFORMATION

The reviewer will examine the no-show policy and discuss the policy during the site visit. Monitoring procedures and documentation of monitoring activities also will be reviewed.

DETERMINATION

The grantee is deficient if it suspends riders who do not demonstrate a true pattern or practice of no-shows. The grantee is deficient if it counts no-shows not under the rider's control or caused by operator error against the rider (consult with TCR as needed). The grantee is deficient if it counts cancellations that do not have the same effect on the system as a no-show. The grantee is deficient if it assesses financial

penalties for no-shows (consult with TCR as needed). The grantee is deficient if it does not allow riders to contest no-shows or does not have an appeals process for suspensions.

The grantee is deficient if it does not monitor subrecipient no-show policies.

SUGGESTED CORRECTIVE ACTION

The reviewer may consult with TCR's ADA Team Leader in FTA's Headquarters Office and the RCRO to determine appropriate corrective action required for these deficiencies.

The grantee will be directed to cease counting no-shows that are not under the rider's control against the rider. If the grantee has a no-show/cancellation policy, the grantee will be directed to count only those cancellations made less than two hours before the scheduled pick-up as a no-show. The grantee will be directed to revise its no-show policy to only suspend riders with a pattern or practice of no-shows. The grantee will be directed to cease assessing a financial penalty for no-shows. The grantee will be directed to allow riders to contest no-shows. The grantee will be directed to implement an appeals process for no-shows. The grantee will be directed to submit evidence of the implemented corrective actions to the FTA RCRO. The grantee will be directed to submit to the FTA RCRO procedures for monitoring the no-show policies of subrecipients.

Part H: Rail Service

31. *If the grantee operates rail service:*

- a. *For rail systems in operation prior to September 6, 1991, have all key stations for which the deadline has passed been completed? For those key stations with FTA approved time extensions, will all work be completed before the deadline expires? For key stations with outstanding findings from key station reviews, are quarterly progress reports being submitted to FTA?*
- b. *Since the last review, have any new commuter rail stations been constructed or existing stations (other than key stations) been altered in any way? If yes, does the boarding platform coordinate with the level of the floor of the railcars?*

Have all other ADAAG requirements been met?

- c. *If level boarding is not provided at newly constructed or altered commuter rail stations (other than key stations), has the grantee documented for each station the specific factors that render level boarding structurally and/or operationally infeasible? What alternative means of boarding are provided for passengers with disabilities, including wheelchair users? Does this method of boarding comply with the applicable provisions of 49 CFR Parts 27, 37, and 38 and DOT level boarding guidance documents?*
- d. *Does the system have at least one accessible car per train?*
- e. *If accessible boarding is provided at a single point (i.e., as with a mini-high platform or wayside lift), does every train stop at every accessible station such that it aligns with this point? Is the train realigned to permit boarding other accessible cars if all wheelchair locations in the car aligning with the accessible boarding point are occupied?*
- f. *Are dwell times sufficient to permit boarding and disembarking by persons with disabilities?*

EXPLANATION

All rail operators in existence prior to September 6, 1991 are required to ensure that key stations (e.g., transfer points, major interchanges with other transportation modes, and stations serving major activity centers) are made accessible by July 26, 1993. Provisions were made for FTA to grant extensions until July 26, 2010 for individual stations where extraordinarily expensive structural changes or complete replacement would be required. The majority of these time extensions have since expired. Some key stations have not been completed, and others have been completed but outstanding issues remain. In such cases, the grantee is required to submit quarterly reports to FTA detailing its activities undertaken to complete the necessary work. Where

FTA has granted an extension that has not yet expired, the grantee should be able to demonstrate how it will meet that extended deadline. Where FTA has not granted an extension or the extension has expired, and stations are not complete, the grantee should be able to provide documentation that it has made achieving compliance a priority.

All rail operators are required to ensure that new stations comply with ADAAG requirements for new construction, including new rail stations. This includes a requirement that the rail to platform height be coordinated with the floor of each railcar such that the platform gap meets certain tolerances for level boarding. ADAAG provides for exceptions to this requirement for commuter and light rail if it is not structurally or operationally feasible to provide level boarding, and lists alternate methods of boarding that may be used. There is no exception for rapid rail. If commuter or light rail stations are constructed without level boarding, and the structural and/or operational infeasibilities have not been documented for each, the grantee may be in violation of the DOT ADA regulations. If a rail operator undertakes alterations to a station (other than key station requirements), those alterations must also be accessible per ADAAG.

Under the DOT ADA regulations, all rail operators are required to ensure that each train (consisting of two or more vehicles if the grantee provides light or rapid rail) includes at least one car that is readily accessible to and usable by persons with disabilities, including persons who use wheelchairs. If accessible boarding is provided at a single point (i.e., as with a mini-high platform or wayside lift), to be considered accessible, trains must stop at every accessible station such that an accessible car aligns with this point. If all the wheelchair positions in the car aligning with the accessible boarding point are occupied, at subsequent stations the train should realign so as to permit boarding other accessible cars.

As noted in Appendix D to 49 CFR 37.93, a rail system using mini-high platforms or wayside lifts is not required, *in most circumstances*, to “double-stop” in order to give passengers a chance to board the second or subsequent car in a train at the mini-high platform or way-side lift. The *only exception* to this would be a situation in which all the wheelchair positions spaces in the first car were occupied. *In this case*, the train would have to double-stop to allow a wheelchair user to board, rather than passing the person by when there was space available in other than the first car.

Grantees must ensure adequate time for individuals with disabilities to board or disembark a vehicle.

REFERENCE

49 CFR 27.7(b)(6)
49 CFR 37.47-37.61

49 CFR Part 37.93
49 CFR 37 Appendix D to §37.93
49 CFR Part 37.167
ADA Accessibility Guidelines for Buildings and Facilities (ADAAG)
DOT Final Rule Adopting new Accessibility Standards – Effective November 29, 2006
DOT Disability Law Guidance on Level Boarding

SOURCES OF INFORMATION

At the desk review, the reviewer will determine if FTA has issued a time extension and whether or not it has expired. If so, the required reports should have been submitted to FTA. System and/or station plans and associated documentation should indicate any factors relating to exceptions from full level boarding requirements on a station by station basis. If the grantee altered or constructed new stations, the reviewer will determine if level boarding is not provided, and when applicable request documentation of the specific factors for each station that rendered level boarding structurally and/or operationally infeasible. If time permits during the site visit, the reviewer will verify “one car per train” accessibility by observing or riding the service.

DETERMINATION

The grantee is deficient if it has a time extension and is not submitting reports to FTA on time, or has not completed the required work by the deadlines.

The grantee is deficient if it has constructed new stations that do not comply with ADAAG, or has not substantiated an exception from the level boarding/platform gap requirements on a station by station basis. The grantee is deficient if it has undertaken alterations to a station and has not complied with ADAAG.

The grantee is deficient if it violates the one car per train rule. The grantee is deficient if each train does not align with an accessible boarding location where single-point, station-based access is provided (an accessible car is not accessible if it cannot be boarded or a passenger requiring the station-based equipment cannot disembark). The grantee is deficient if, when all wheelchair locations are occupied aboard an accessible car aligning with a station-based single-point means of accessible boarding, it does not reposition the train to permit accessible boarding of other accessible cars.

SUGGESTED CORRECTIVE ACTION

The grantee will be directed to submit delinquent reports to the FTA RCRO. The grantee will be

directed to submit to the FTA RCRO documentation supporting platform related exceptions. The grantee will be directed to submit to the FTA RCRO documentation that it has corrected noncompliant station elements in new construction or alterations. The regional office and headquarters will determine corrective actions for one car per train rule and other operational deficiencies.

Part I: Complaints/Lawsuits

32. *Does the grantee have a procedure for responding to and tracking complaints? Who handles the complaints?*
33. *Has the grantee or its subrecipients received any complaints of discrimination due to disability? What is the status of the complaints?*
34. *Are there any lawsuits alleging discrimination on the basis of disability? If so, identify parties to suits and issues.*

EXPLANATION

These questions are for information only. Complaints or legal actions may indicate a problem with implementation of the ADA requirements. Requiring subrecipients to notify the grantee of any complaints may be part of the grantee's oversight program. TCR should be advised of any pending lawsuits.

REFERENCE

None

SOURCES OF INFORMATION

During the desk review, the reviewer will obtain information regarding complaints and lawsuits from headquarters or the RCRO. During the site visit, this information will be discussed with the grantee.

DETERMINATION

None

SUGGESTED CORRECTIVE ACTION

None